

REMARKS

Claims 1-10 were pending at the time of the Office Action. All stand rejected.

Change of attorney

The Examiner is asked to note that a change of attorney has occurred in this matter. The undersigned attorney will file a revocation of the prior attorney and a change of correspondence address in the next few days. The Examiner is requested to check for the filing of that document before mailing a further action.

Information Disclosure Statement

The applicant thanks the Examiner for the review of the Information Disclosure Statement filed on 4 February 2004.

Rejection under 35 USC §102(b)

The Examiner has rejected claim 7 as anticipated by either US Patent 6,966,509 B2 to Janzen ("Janzen '509") or US Patent 6,637,683 to Wilbur ("Wilbur '683"). Applicant respectfully traverses.

With regard to Janzen '509, it is the applicant's position that the Examiner has erred in citing the patent as prior art. Janzen '509 was filed in the USPTO on 18 Dec 2003, claiming priority to Canadian application 2,449,547, filed on 17 Nov 2003. Both of these dates are **after** the filing date of 29 September 2003 accorded the present application. Note, for example, that the present application has a serial number (10/673,301) that is lower than the serial number (10/737,773) of Janzen '509.

Claim 7 does not read on Wilbur '683. While Wilbur '683 may teach a "device for crushing a tablet", it does not teach each and every element of claim 7, and the Examiner's cursory statement that "both [Janzen '509 and Wilbur '683] show pill crushers having a platen/anvil concave/convex relationship" belies the fact that an element by element reading of the claim onto the depicted device fails. Wilbur '683 has a base 10. It also teaches a movable handle 11. Handle 11 has a convex crushing face 15 that registers with a threaded recess 14. Handle 11 also has blades 18 that register with embedded pill rack 13.

Wilbur '683 does not have an anvil that is "integrally fixed to" the base, as required by claim 7. There is a receiving member 16 that has a "concave crushing face", but Wilbur teaches the receiving member 16 as being "spoon-like" (Col. 3, line 8)

and “inserted by sliding in a track 17 from rear of base 10” (Col. 3, line 7-8). The ability of the receiving member 16 to be “moved along track 17” (Col. 3, lines 18-19), “removed from base 10 along track 17” (Col. 3, lines 27-28) and “used to administer the powdered pill without loss of measured dosage” (Col. 3, lines 28-29) is hardly indicative of being “integrally fixed to” the base, as claim 7 requires.

Further, there is no “platen” with “a convex crushing face” (such as seen on crushing member 15) that is “coupled at a pivot to said base”, unless the platen and the handle are one and the same, but, if this is the case, then the clause in claim 7 that says “whereby movement of said handle produces movement of said platen relative to said anvil, for crushing a tablet between said anvil and said platen” lacks meaning, as does the “means for moving forcibly said platen against said anvil when said handle is moved from a first position to a second position.”

Applicant also notes that the device described and claimed in the present invention operates with a different mechanism for crushing than that taught by Wilbur ‘683. In Wilbur ‘683, the convex crushing face 15 is advanced against the concave crushing face 16 (with the previously fractured pill positioned between the faces) by a rotating handle 15A so that male threading on crushing member 15 threadingly engages threaded recess 14, below which receiving member 16 is placed.

For at least these reasons, claim 7 is not anticipated by Wilbur ‘683, and claims 8-10, which depend from claim 7, are all allowable as proper dependent claims.

Rejection under 35 USC §103(a)

The Examiner has rejected claims 1-10 as obvious over a combination of US Patent 5,915,637 to Parsons (“Parsons ‘637”) with either Janzen ‘509 or Wilbur ‘683. Applicant respectfully traverses.

With respect to the combination of Parsons ‘637 with Janzen ‘509, applicant repeats its assertion above that Janzen ‘509 is unavailable as prior art under 35 USC 102, as it was filed after the filing date of the present application, in both the US and Canadian patent offices.

With respect to the combination of Parsons ‘637 with Wilbur ‘683, the applicant respectfully notes that both the present application and Wilbur ‘683 go to some rather extensive length in their respective “Background” sections to distinguish themselves

from Parsons '637. Wilbur '683, with its teaching away from Parsons '637 and with the rotating means for engagement, simply cannot be operatively combined with Parsons '637 to provide the claimed invention of claim 1 or claim 7. With claims 1 and 7 not obvious (and therefore allowable), claims 2-6 and 8-10 are also allowable as proper dependent claims.

Respectfully submitted,

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